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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

TD 9189

RIN 1545-BA22

Property Exempt from Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to property exempt from levy, which revise regulations currently published under Internal Revenue Code section 6334. The regulation reflects changes made by the IRS Restructuring and Reform Act of 1998 (the RRA 98) and provides guidance regarding: (1) procedures for obtaining prior judicial approval of certain principal residence levies; (2) an exemption from levy for certain residences in small deficiency cases and for certain business assets in the absence of administrative approval or jeopardy; and (3) the applicable dollar amounts for certain exemptions. The regulation also reflects changes made by the Taxpayer Relief Act of 1997, which permits levy on certain specified payments with the prior approval of the Secretary.

EFFECTIVE DATE: These regulations are effective March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Robin Ferguson at (202)622-3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains a final regulation amending the Procedure and Administration Regulations (26 CFR part 301) under section 6334 of the Internal Revenue Code of 1986 (Code). The final regulation provides guidance reflecting the amendments to section 6334 made by RRA 98 (Public Law 105-206), and the Taxpayer Relief Act of 1997 (Public Law 105-34)(TRA 97). A notice of proposed rulemaking (REG-140378-01) was published in the **Federal Register** on August 19, 2003 (68 FR 49729). No written comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested, scheduled or held. This final regulation adopts the provisions of the notice of proposed rulemaking with no changes.

Comments on the Proposed Regulation

None.

Modifications of the Proposed Regulation

None.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5

U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of the final regulation is Robin Ferguson of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301BPROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 ***

Par. 2. Section 301.6334-1 is amended as follows:

1. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), and (f) are revised.
2. Paragraphs (g) and (h) are added.

The revisions and additions read as follows:

' 301.6334-1 Property exempt from levy.

(a) * * *

(2) Fuel, provisions, furniture, and personal effects. So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed \$6,250 in value.

(3) Books and tools of a trade, business or profession. So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate \$3,125 in value.

* * * * *

(8) Judgments for support of minor children. If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of that taxpayer's minor children, so much of that taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Service is not required to release a levy until such time as it is established that the amount to be released from levy actually will be applied in satisfaction of the support obligation. The Service may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period that shall be exempt from levy, for purposes of complying with a support obligation. If the taxpayer has more than one source

of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy, at the discretion of the Service, may be allocated entirely to one salary, wage or source of other income or be apportioned between the several salaries, wages, or other sources of income.

* * * * *

(13) Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy- (i)

Residences in small deficiency cases. If the amount of the levy does not exceed \$5,000, any real property used as a residence of the taxpayer or any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(ii) Principal residences and certain business assets. Except to the extent provided in section 6334(e), the principal residence (within the meaning of section 121) of the taxpayer and tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

* * * * *

(d) Levy allowed on principal residence. The Service will seek approval, in writing, by a judge or magistrate of a district court of the United States prior to levy of property that is owned by the taxpayer and used as the principal residence of the taxpayer, the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child.

(1) Nature of judicial proceeding. The Government will initiate a proceeding for judicial approval of levy on a principal residence by filing a petition with the appropriate

United States District Court demonstrating that the underlying liability has not been satisfied, the requirements of any applicable law or administrative procedure relevant to the levy have been met, and no reasonable alternative for collection of the taxpayer's debt exists. The petition will ask the court to issue to the taxpayer an order to show cause why the principal residence property should not be levied and will also ask the court to issue a notice of hearing.

(2) The taxpayer will be granted a hearing to rebut the Government's *prima facie* case if the taxpayer files an objection within the time period required by the court raising a genuine issue of material fact demonstrating that the underlying tax liability has been satisfied, that the taxpayer has other assets from which the liability can be satisfied, or that the Service did not follow the applicable laws or procedures pertaining to the levy. The taxpayer is not permitted to challenge the merits underlying the tax liability in the proceeding. Unless the taxpayer files a timely and appropriate objection, the court would be expected to enter an order approving the levy of the principal residence property.

(3) Notice letter to be issued to certain family members. If the property to be levied is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child, the Government will send a letter to each such person providing notice of the commencement of the proceeding. The letter will be addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children. If it is unclear who is living in the principal residence property and/or what such person's relationship is to the taxpayer, a letter will be

addressed to AOccupant@. The purpose of the letter is to provide notice to the family members that the property may be levied. The family members may not be joined as parties to the judicial proceeding because the levy attaches only to the taxpayer's legal interest in the subject property and the family members have no legal standing to contest the proposed levy.

(e) Levy allowed on certain business assets. The property described in section 6334(a)(13)(B)(ii) shall not be exempt from levy if -

(1) An Area Director of the Service personally approves (in writing) the levy of such property; or

(2) The Secretary finds that the collection of tax is in jeopardy. An Area Director may not approve a levy under paragraph (e)(1) unless the Area Director determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceeding. When other assets of an individual taxpayer include permits issued by a State and required under State law for the harvest of fish or wildlife in the taxpayer's trade or business, the taxpayer's other assets also include future income that may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

(f) Levy allowed on certain specified payments. Any payment described in section 6331(h)(2)(B) or (C) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h).

(g) Inflation adjustment. For any calendar year beginning after 1999, each dollar

amount referred to in paragraphs (a)(2) and (3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (using the language "calendar year 1998" instead of "calendar year 1992" in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of \$10, the dollar amount will be rounded to the nearest multiple of \$10 (rounding up if the amount is a multiple of \$5).

(h) Effective date. This section is generally effective with respect to levies made on or after July 1, 1989. However, any reasonable attempt by a taxpayer to comply with the statutory amendments addressed by the regulations in this section prior to February 21, 1995, will be considered as meeting the requirements of the regulations in this section. In addition, paragraph (a)(11)(i) of this section is applicable with respect to levies issued after December 31, 1996. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), (f), (g) and (h) of this section apply as of March 7, 2005.

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2005

Acting Deputy Assistant Secretary of the Treasury.